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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------|------------------|
| 09/826,690 | 04/05/2001 | Joseph Harbaugh | 6994-1 | 4205 |
| 7590 Gregory A. Nelson Akerman Senterfitt 222 Lakeview Avenue, Fourth Floor P.O. Box 3188 West Palm Beach, FL 33402-3188 | | | EXAMINER CASLER, TRACI | |
| | | | ART UNIT 3629 | PAPER NUMBER |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
| 3 MONTHS | | 03/08/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary**Application No.**

09/826,690

Applicant(s)

HARBAUGH, JOSEPH

Examiner

Traci L. Casler

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to papers filed on January 29, 2007.

Claims 1, 13 and 20 have been amended.

Claims 1-22 are pending.

Claims 1-22 are rejected.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 13 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by www.gradcollege.swt.edu (any linkage 2000, March 4, 2000). Hereinafter referred to as swt.edu.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3629

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1, 13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over www.gradcollge.swt.edu (any linkage on(2000): *March 4, 2000).

7. As to claims 1 and 13, swt.edu teaches a method for admitting students to a university, who fall(sub-par numerical) below the minimum requirements of standardized tests and GPA's, to the institution while setting **conditions** on the admission opportunity. Once a student is meets all the requirements of their conditional admittance they are giving an unconditional admission status.(P. 7 I. 9-10, 29-25 and 37-40). **The classes being taken do not count towards credit for a program(Pg. 14 ¶ E and Pg. 17 ¶ C)** As to the limitation getting a pool of standardized test takers the examiner takes official notice that it is old and well known in the art of admissions to purchase or gain access to a list of students in a particular category in order to target enrollment. The examiner draws on her experience as an admissions counselor from August 1999 to May 2004 that colleges and universities routinely purchase student names and test scores from testing organizations such as SAT in order identify students

in an academic/testing category in which the school wishes to target enrollment. This practice was taking place long before the examiner was in the field in 1999. Therefore it would have been obvious to use this test take pool batch for identifying new admits targeted for enrollment.

1. As to claim 20 swt.edu teaches a GRE score of 900 or above for regular admission; conditionally admitted even though you may not meet the minimum requirements.(Pg. 7 l. 10, 32-33)

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-4, 7, 14-15 and 18-19 rejected under 35 U.S.C. 103(a) as being unpatentable over www.swt.edu as applied to claim 1, 13 and 20 above, and further in view of Karen W. Arenson; *New York Times*, "Opponents of a Change in CUNY Admissions Policy Helped Pass a Compromise Plan"; November 24, 1999.

1. As to claims 2-3 and 14-15 swt.edu teaches a method of conditional admittance using GPA's but fails to teach the standardized test range. Arenson teaches the use of standardized test scores to identify students who don't qualify for regular admission.(Pg 2 ¶ 7-8). It would have been obvious to combine the standardized test scores to identify

students who would fall into conditional admittance, as test scores are a normal index score to use when considering students for regular admissions. As to the limitation of scoring and calibrated grading by applicants own admission this is a practice that is old and well known in the art therefore does not patentably distinguish it from the prior art.

4. As to claim 4, swt.edu teaches the method of conditional admission but fails to teach the satisfactory criteria for at least one examination. Arenson teaches a method of placement tests to determine level of work(Pg. 2 ¶ 7). It would have been obvious to set satisfactory criteria for the examinations so as to have a guide to identify a students progress or success indicator.

5. As to claims 7 and 18, swt.edu teaches conditions for which admission is based on, however it fails to teach instruction environment. Arenson teaches enrolling students in remedial classes on the senior campus(Pg. 2 ¶ 8). It would have been obvious to combine remedial classes into the main campus program so as to provide the conditionally admitted students with the skills they would need to meet the satisfactory requirements and complete regular level courses.

6. Claims 5-6, 8-9, 16-17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over swt.edu and Arenson as applied to claims 2-4, 7-8, 14 and 18-19 above, and further in view of US Patent 6, 146,148, Nov. 14 2000, Stuppy.

7. As to claims 5 and 16 Arenson fails to teach a method of instruction as condition of admittance but fails to teach distance instruction. Stuppy teaches a method of automated instruction creating a student workbook(C.1 I. 67, C. 2 I. 1, 6). It would have

Art Unit: 3629

been obvious to combine the conditional instruction with the technology of distance education to make it more cost effective and easily accessible.

8. As to claims 6 and 17 Arenson teaches a method of instruction for conditionally admitted applicants but fails to teach an electronic method for delivering instruction.

Stuppy teaches electronically generating instructional material(C. 2 I. 3-5).

9. Stuppy further teaches collecting student data in response to instructional material(C. 2 I. 7-8).

10. Stuppy also teaches collecting student data from student to teacher.(C. 2. I.20-21). It would have been obvious to combine the technology used by Stuppy in Arenson' instruction method so as to conserve time and money.

11. As to claims 8 and 19 Arenson fails to teach remote online instruction. Stuppy teaches instructors teaching a plurality of students at different arrangements in completely different locations.(C. 5 I. 15-16).

12. Stuppy further teaches teacher and student participation online(C. 5 I.21-22)

13. It would have been obvious to combine the online technologies with the teachings of Arenson for a more interactive, accessible and cost-effective instructional environment.

14. As to claim 9 Arenson fails to teach a method of administering and grading an examination online. Stuppy teaches a method of mastery testing to determine the skill of students during a later session with results stored and used on the server(C. 7 I. 41-46). It would have been obvious to combine the electronic technologies of Stuppy to the

teachings for Arenson to have a method of assessing student level in an efficient and accessible manner.

15. As to claim 21 swt.edu teaches a paper method of admitting applicants conditionally. Swt.edu fails to teach an electronic method of admitting the students and completing the conditions of the admission electronically. Stuppy teaches an automated assessment and testing through a multimedia interface and answers questions electronically. Tests are scored and analyzed by computer then utilized to generate a program suited for the student. (C. 4. I. 40-56)

16. It would have been obvious to combine the online teachings of Stuppy with swt.edu to advance the process with the use of technology as well as a more accessible and efficient process.

17. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over swt.edu and Arenson as applied to claims 2, 4, 7, 14 and 18-19 above, and further in view *New Models to Assure Diversity, Fairnes and Appropriate Test Use in Law School Admissions*. A Publication of the Law School Admission Counsel; October 1999(hereafter referred to as LSAC).

18. As to Claim 10 swt.edu teaches an admission compiling process but it fails to teach the method with the use of LSAT scores. LSAC teaches a method of using LSAT scores as a part of the admission decision making process.(Pg. 14 ¶ 7, 'Academic Factors'). It would have been obvious to combine the teachings of LSAC to swt.edu since swt.edu's process was for general graduate programs and the LSAT a specific assessment test for Law schools.

19. As to claim 11 Arenson teaches a method of using test scores and GPA's in the admissions decision process but fails to the process using the LSAT specifically. LSAC teaches a method of using the LSAT as an admissions criteria(Pg. 14 ¶ 6-7). It would have been obvious to combine the teaches of Arenson' admissions process with that of the LSAC as applicants applying to Law school would take the Law School Assessment Test(LSAT) as part of the requirements for admission. Examiner notes an enrolled student has already been admitted to the university, as se forth in claim 1, therefore if they are enrolled they can't be part of a "program for admissions".

20. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over swt.edu as applied to claims 1, 13 and 20 above, and further in view of US Patent 6, 088, 686, July 11, 2000; Walker et al.

21. As to claim 22 swt.edu teaches a method for determining a students qualifications for admissions but it fails to teach an electronic computer process for completing the method. Walker et al teaches a method for electronically submitting an application and performing the steps of the acceptance process.(C. 2. I. 1-8) It would have been obvious to combine the teaches of Walker into swt.edu as they are both the automation of an application review process.

22. Walker et al., further teaches program requirements for new or existing customers that are systematically ranked(A, B, C and D) and recommended decision and required credit policies are appropriately completed(C. 6 I. 45-58). It would have been obvious to combine the teachings of Walker with swt.edu so as to have codes

attached to the required admissions criteria data so a computer program can read and process the information.

23. Walker continues to teach a method of enrolling the applicant for the loan which they have been approved for as an acceptance of the offer and enable the participation in the program (C. 8 I. 51-55; 67-68 & C. 9 I. 1-2). It would have been obvious to combine the enrollment acceptance of Walker with swt.edu so that both the school and the student have an agreement of the admissions condition and are able to begin the course requirements set forth by the admission status. Examiner further notes that the step of making an old method (submitting paper applications) into an automated process does not patentably distinguish itself over the prior art of record

Response to Arguments

8. Applicant's arguments filed January 29, 2007 have been fully considered but they are not persuasive.

9. As to applicants arguments regarding SWT not teaching "sub-par numerical" credentials. As noted in advisory action mail December 04, 2006 the limitation "sub-par numerical" is a broad term. This does not limit the credentials to credentials not meeting admissions standards but merely being on the low end of the admissions standards. As to applicants arguments that examiners statements regarding how potential admits are identified and being old and well known in the art does not address the limitations which are "drawn to conduct a search for a test taker". The examiner stated that how and what an institution searches in not novel. Colleges and universities have been

conducting searched for potential enrollees in all different categories of academics and programs.

10. As to applicants arguments that the reference does not teach the non-credit courses as the "primary measure" to determine admission. The examiner argues the applicant is claiming the examination test score that satisfies admission criteria. As currently claimed, applicants non-credit courses are merely used as a resource to prepare the student for the examination used to determine admission status.

11. As to applicants arguments that a case of prima facia requires motivation to combine in the reference. Applicant has selectively chosen to omit the MPEP prtion that sates "either in the reference or in the knowledge generally available to one of ordinary skill in the art:" All of the knowledge used has regarding admission standards, pre-admission requirements and to successfully increase enrollment at a university or college.

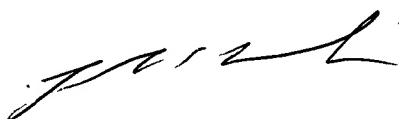
12. The affidavit under 37 CFR 1.132 filed August 24, 2005 is insufficient to overcome the rejection of claims 1-22 based upon 07/27/2006 as set forth in the last Office action because Affiant Has Never Seen Invention Before It includes statements which amount to an affirmation that the affiant has never seen the claimed subject matter before. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716.

Art Unit: 3629

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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